UNITED STATES DISTRICT COURT
for the
Southern District of Indiana

MICHAEL HOWARD REED)
Plaintiff(s),)
vs.) 2:15-cv-00212-JMS-MJD
)
LEANN LARIVA)
Defendant(s).)

Reply to Entry on 9-02-2015, Document 8 and
Received on 9-8-2015, on 2241 Writ of Habeas corpus as

AFFIDAVIT

County of Reed. Vigo.)
) ss. AFFIDAVIT of FACT
State of Reed. Indiana.)

TO: Hon. Jane Magnus-Stinson
Judge, United States District Court
Southern District of Indiana
105 U.S. Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

COMES NOW Michael-Howard-Reed, Petitioner, and states under the pains and penalties of perjury 28 U.S.C.§1746 that all claims herein are fact, and truthful, and not misleading and are not to be construde or converted to alleging, this is done under the pains and penalties of perjury and all responses hereinforth must be done under the pains and penalties of perjury, and in honor super protest of dishonor, and states as follows:

On 9-8-2015, the Petitioner received the Entry from Hon. Jane Magnus-Stinson stating that Petitioner Michael-Howard-Reed must open the portal to a §2241 Writ of Habeas corpus by and through a colorable claim §2255 federal custody:

remedies on motion attacking sentence §2255(e) which states an application for a Writ of Habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention, and states as follows:

1. The court lost jurisdiction when all the judicial officers of the court and the United States Attorney violated the Acts of Congress and the Supreme Court, by bringing a false claim by not meeting the threshold for a 18 U.S.C. 922 (g)(2) charge, wherein for this eviserates a §2255 filing in a court that has no jurisdiction which makes the §2255 inadequate; and that

2. The court and all judicial officers created a miscarriage of justice when the judicial officers Knew or should have known there was no indictment by a grand jury whereinfore the court lost jurisdiction for hearing any further claims such as a §2255 whereinfore the court is now inadequate and/or ineffective for giving any remedy for a judgment procured by fraud, and can be attacked any time, in any court, either directly or collaterally, People ex rel.Brzica v. Village of Lake Barrington, 644 N.E.2d 66 (Ill. App. 2 Dist. 1994); and that

3. Old Wane Mutual Ins. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236(1907)"courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority and certainly in contravention of it, their judgments and orders are regarded as nullities, they are not voidable, but simply void and even prior to reversal", one cannot call any a void by a §2255 because it is ineffective, [and it is clear and well established law that a void order can be challenged in any court by a §2241; and that

4. The habeas corpus proceeding is correct when the judgment is void on its face and it could be attacked at any time, Johnson v. Zerbst, warden, 304 U.S. 458, ____ S. Ct. 1019, 82 L.Ed. 1461; and that

5. Any acts by the court after its jurisdiction has been destroyed are considered VOID(emphasis added) Johnson v. Zebst, 304 U.S. 458, ____ S.Ct. 1019, 82 L.Ed. 1461(1938) ; Boruff v. United States, 310 F.2d 918(5th Cir. 1962); Thompson v. King, 107 F.2d 307(8th Cir. 1939); and that

6. Habeas corpus is an appropriate remedy to attack a void judgment or sentence. See: Ex parte Seidel, 39 S.W.3d 221,224, 225 at n. 4(Tex. Crim. App. 1996); Heath v. State, 817 S.W. 2d at 336(Tex. Crim. App. 1991)(opinion on original submission); Ex parte McIver, 586 S.W.2d 851(Tex. Crim. App. 1979).

7. A void conviction may be challenged in a post-conviction habeas corpus proceeding. Beck, 922 S.W.2d 181; Heath, 817 S.W.2d at 336; Ex parte McIver, 586 S.W.2d 851; Burns, 441 S.W.2d; Jenkins, 433 S.W.2d 701; Higginbotham, 382 S.W.2d 927; Strother, 395 S.W.2d 629; Rawlins, 255 S.W.2d 877, and that

8. Whitmill v. Armontrout, 42 f.3d 1154 (8th Cir. 1994) (Opinion)"The actual innocence exception is 'not a itself constitutional claim, but instead a gateway through which a habeas petitioner must(emphasis added) pass to have his otherwise barred constitutional claim considered on the merits.'"; Herrera v. Collins, 506 U.S. 390, 122 L.Ed.2d 203, 113 S. Ct. 853,862(1933). "The actual innocence exception applies when 'the habeas petitioner demonstrates by clear and convincing evidence that, but for the alleged constitutional error, no reasonable juror would have found the petitioner guilty of the crime of which he was convicted.'" Whitmore v. Avery, 26 F. 3d 1426,1429(8th Cir. 1994)(quoting Wallace v. Lockhart, 12 F.3d 823,827(8th Cir. 1994)."Because the question is one of actual as opposed to legal innocence, this determination must be made 'in light of all the available evidence including that alleged to have been illegally admitted (but with due regard to any unreliability of it)and evidence tenably claimed to have been wrongly excluded or to have become available only after trial . . ." Kuhlmann v. Wilson, 477 U.S. 436,454-55 n.17, 91 L.Ed.2d 364,106 S.Ct. 2616(1986).

Whereinfore the Petitioner has established the requirements for invoking §2255(e) and has opened the protal to a §2241 proceeding and now the Petitioner is entitled to state the merits of his claim. Potts v. United States, 210 F.3d 770(7th Cir. 2000); see: Attachment "A"; and that

As for explaining how this claim of actual innocence differes from the challenge that the Public Defender made on appeal in my opinion, and the record clearly affirms, is meritless; the court appointed attorney never brought up the fact that Petitioner was never a convicted fellon; and that there was no grand jury that issued an indictment, and the Public Defender never brought up the fact that Michael-Howard-Reed had no standing forever being charged, and that the charges were all ready adjudicated by and through Title 5 U.S.C., and that the court did not prove jurisdiction in and on, and for the record for proceeding to judgment; and that all judicial officers of the court violated 18 U.S.C.§§1001, 2071 and brought forth a false claim and violated the False Claims Act and the Public Defender never brought up my constitutionally protected guarantee protected unlienable rights as one of We-the-People-and-not-a-PERSON under the Acts of Congress, see 103 U.S. 168, 26 L.Ed. 377(1881), and all other unstated merits, of the case.

Petitioner must also accentuate the following:

There is not a scintilla nor iota of credible, logical nor objective evidence that petitioner was a convicted felon,

at the time of the offense, sub judice and the United States Constitution; 1st, 2nd, 5th, 8th and 14the Amendments as well as the progeny of cases unequivocally delineated in the prior motion, permits the filing of this action; and that

In the case of McQiggin v. Perkins, 133 S.Ct. 1924, 185 L.Ed.2d 1019, 2013 U.S. LEXIS 4068, 81 U.S.L.W. 4327, No. 12-126(2013), the Supreme Court clearly enunciated, without equivocation and not subject to interpretation, that "actual innocence," (just as Petitioner is asserting) serves as a gateway through which a petitioner may pass whether the impediment is a procedueral bar or expiration of the statute of limitations. Although Petitioner is statutorily barred from pursuing relief, in accord with 28 U.S.C. §2255 (pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214), he had a cause of action under 2241; and that

To deny Petitioner jurisdiction and relief is tantamount to the court endorsing a known and grave miscarriage of justice. The Supreme Court, as far back as Holland v.Florida, 560 U.S. ___, 130 S.Ct. 2549, 177 L.Ed.2d 130(2010); and Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808(1995) have stood for this seminal principle; but it is McQuiggin v. Perkins, infra, that provides his strategic mechamism and vehicle, allowing this Honorable Court to decide this case; and that

Henceforth, Petitioner has duly satisfied the mandates of 28 U.S.C. §2255(e), as "actual innocence" of the offense and the dictates of the highest court in the land, are far more potent and decisive than Brown v. Rios, 696 F.3d 638, 640(7th Cir. 1998); which would also fail to bar this "actual innocence" claim by habeas corpus;

Most respectfully,

Michael-Howard-Reed©tm

MICHAEL H. REED

Dated: 17 September 2015 Without Prejudice

UNITED STATES DISTRICT COURT
for the
Southern District of Indiana

MICHAEL HOWARD REED
Plaintiff(s),
vs.
LEANN LARIVA
Defendant(s).

2:15-cv-00212-JMS-MJD

CERTIFICAT OF SERVICE AS AFFADAVIT

County of Reed. Vigo)
) ss. Affadavit
State of Reed. Indiana.)

Comes now Michael-Howard-Reed. Petitioner States under the pains of purjury 28§ 1746. That Executor-Michael-Howard-Reed. Caused to be mailed first class postage pre-paid notice Reply to Entry on 9-2-2015, Document 8 and Received on 9-8-2015, on 2241 Writ of Habeas corpus as AFFIDAVIT

On 09-17-2015, In the institution mail Box. USPS tracking number #xxxxxxxxxxxxxxxxxxxxxxxx to: Hon. Jane Magnus-Stinson, Judge, United States District Court, Southern District of Indiana, 105 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 921 Ohio Terre-Haute Indiana 47807 and to: LEANN LARIVA, ACTING WARDEN, 4200 Bureau Road North, Terre Haute, IN, 47807 USPS tracking Number# TO:
Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana
105 U.S. Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

Respectfuly

Michael-Howard-Reed.©TM
Michael-Howard-Reed.
Without Prejudice

Cc.

Bcc.

Attachment A

Rickey L. Potts, Petitioner-Appellant, v. United States of America, Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
210 F.3d 770; 2000 U.S. App. LEXIS 7359
No. 99-1186
February 17, 2000, Submitted
April 24, 2000, Decided

Editorial Information: Prior History

Appeal from the United States District Court for the Eastern District of Wisconsin. No. 98 C 979. **Thomas J. Curran, Judge.**

Disposition:
Affirmed.

Counsel RICKEY L. POTTS, Petioner - Appellant, Pro se, Sandstone, MN USA.
For UNITED STATES OF AMERICA, Respondent - Appellee:
Mel S. Johnson, OFFICE OF THE UNITED STATES ATTORNEY, Milwaukee, WI USA.

Judges: Before Posner, Chief Judge, and Coffey and Easterbrook, Circuit Judges.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner challenged order of United States District Court for Eastern District of Wisconsin, which dismissed his motion under 28 U.S.C.S. § 2255.Petitioner's withdrawal of first motion for habeas relief was not tantamount to refusal to accept filing, thus second motion should not have been entertained for failure to comply with conditions for filing successive motion.

OVERVIEW: Noting that petitioner had filed a previous motion under 28 U.S.C.S. § 2255, the trial court dismissed his subsequent motion as untimely. Petitioner's withdrawal of his motion was not an abortive filing because he was assisted by counsel, filed a competent motion, and then withdrew it in light of respondent federal government's brief in opposition. In essence, petitioner's motion was not tantamount to a refusal to accept a filing because of formal deficiencies. The appellate court concluded that the trial court should not have entertained petitioner's motion at all because he failed to demonstrate compliance with the conditions on the filing of a second or successive such motion. Thus, the motion was properly dismissed, but for the wrong reason.

OUTCOME: Order affirmed; trial court should not have entertained petitioner's motion at all because he failed to demonstrate compliance with the conditions on the filing of a second or successive such motion.

LexisNexis Headnotes

Criminal Law & Procedure > Habeas Corpus > Procedure > General Overview

The stringent limitations that the Antiterrorism and Effective Death Penalty Act of 1996 places on the filing of a second or successive petition for habeas corpus, or its federal prisoner's counterpart, a motion under 28 U.S.C.S. § 2255, make it vital to determine whether a previous petition or motion was the real

Attachment-A

thing that ought to subject the petitioner or movant to those limitations.

Opinion

Opinion by: Posner

Opinion

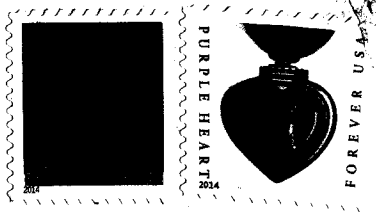
{210 F.3d 770} Posner, Chief Judge. The stringent limitations that the Antiterrorism and Effective Death Penalty Act places on the filing of a second or successive petition for habeas corpus (or its federal prisoner's counterpart, a motion under 28 U.S.C. sec. 2255) make it vital to determine whether a previous petition (or motion) was "the real thing" that ought to subject the petitioner or movant to those limitations. The essential point is that a prisoner is entitled to one unencumbered opportunity to receive a decision on the merits. The polar cases that elucidate this principle are easy: where the petition was not accepted for filing, e.g., *Stewart v. Martinez-Villareal*, 523 U.S. 637, 643-45, 140 L. Ed. 2d 849, 118 S. Ct. 1618 (1998); *O'Connor v. United States*, 133 F.3d 548 (7th Cir. 1998); *Benton v. Washington*, 106 F.3d 162 (7th Cir. 1996); *In re Moore*, 339 U.S. App. D.C. 1, 196 F.3d 252, 255 (D.C. Cir. 1999), and where the petition was rejected on the merits. E.g., *In re Page*, 179 F.3d 1024, 1025 (7th Cir. 1999); *Bennett v. United States*, 119 F.3d 470 (7th Cir. 1997); *Pratt v. United States*, 129 F.3d 54, 60 (1st Cir. 1997). Nesting within these extremes is a further division between cases in which the petitioner withdraws his petition before he has any reason to think it is going to be denied (maybe he realizes that because of lack of legal assistance he cannot articulate his legal claim) and cases in which he withdraws it when it becomes clear to him that it is indeed about to be denied. The first type of case is illustrated by *Garrett v. United States*, 178 F.3d 940 (7th Cir. 1999) (per curiam), and *Haro-Arteaga v. United States*, 199 F.3d 1195 (10th Cir. 1999) (per curiam), and the second by *Felder v. McVicar*, 113 F.3d 696 (7th Cir. 1997). We must decide which of the two types the present case is closer to.

Potts's first section 2255 motion was met by a brief in opposition arguing in detail that the motion lacked merit. Potts and his lawyer, after conferring about the merits, decided to withdraw the motion; a motion to dismiss was made and granted. We do not see how Potts's 2255 motion could be thought an abortive filing, akin to *Garrett*, the case in which the movant {210 F.3d 771} withdrew his motion because he realized that, lacking as he did legal assistance, his motion failed to present his case. Potts was assisted by counsel, filed a competent motion, and then appears to have realized (though unlike Felder he did not acknowledge) that in light of the government's brief in opposition, the motion was doomed. In these circumstances, it would be unrealistic to treat the dismissal as tantamount to a refusal to accept a filing because of formal deficiencies. He had his opportunity to receive a decision on the merits; he flinched, seeing the handwriting on the wall.

The district court, while noting that Potts had filed a previous 2255 motion, dismissed his present motion as untimely. The court should not have entertained the motion at all, because Potts had failed to demonstrate compliance with the conditions on the filing of a second or successive such motion. The motion was properly dismissed, but for the wrong reason.

Affirmed.

Michael Reed
04414-048
PO BOX 33
Terre-Haute
Indiana 47808



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